IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 242 of 1984

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANJI DEVJI TANK

Versus

RAMJIBHAI D TANK

Appearance:

MR BHARAT J SHELAT for Appellant

MS KJ BRAHMBHATT for Appellant

MR DD VYAS for Respondent

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 04/02/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.C.PATEL)

1. The appellant and respondent are brothers. The appellant was the defendant in Special Civil Suit No.230/77 in the Court of 5th Joint Civil Judge (Senior Division), Surat. The suit was filed by the respondent-original plaintiff praying for possession of the suit premises and mesne profits. The suit was based on a partition deed dated 1.1.1973. The learned Trial Judge, by his judgement and order dated 27.7.1983, decreed the suit in favour of the respondent. The appellant has, therefore, filed this appeal challenging the said decree.

2. The learned trial Judge raised the following issues in view of the pleadings of the parties:

"1. Whether the plaintiff proves that he is the sole-owner of the suit factory premises?

2. Whether the plaintiff proves that before dated 1-1-73 the plaintiff, defendant and their two brothers Jivraj Devji and Kuverji Devji owned moveable and immoveable properties and business as averred in para (2) of the plaint?

3. Whether the plaintiff proves that by a writing dated 1-1-73 the joint properties and the business were partition among the plaintiff, defendant and their two brothers, and by the virtue of the writing the plaintiff became the owner of the suit property as averred in para (3) of the plaint?

4. Whether the plaintiff proves that the defendant is liable to remove the machineries, but in the defendant requested the plaintiff to permit him to keep the machineries in the suit premises and award the plaintiff that he would shift the machineries in the G.I.D.C. shed and requested the plaintiff to lease the suit properties in of Rs.3,000/- per month and the defendant had also agreed to pay the water and electric charges?

5. Whether the plaintiff proves that the

defendant has committed a breach of the agreement and the defendant has no right or interest in the property and he is the tres-passer?

6. Whether the plaintiff proves that he is entitled to get the mesne profit at the rate of Rs.3,000/- p.m. and Rs.1,13,500/- are due from dated 1-5-74 to 30-6-77 from the defendant and the plaintiff the amount except Rs.24,000/- hence he is entitled to recover Rs.24,000/- from the defendant?

7. Whether the defendant proves that he had stayed in the foreign country and he was not aware of the laws of this country and therefore, relying upon the plaintiff he given up his signatures on the papers to the plaintiff whenever demanded by him and rely the documents as aware in the plaint have not further place, but the right of the defendant is obtained by the plaintiff by undue influence and cheating as stated by the defendant at para 12 of his written statement at Exh.18?

8. Whether the plaintiff is entitled to get the reliefs as prayed for in para 13 of the plaint?"

3. After recording the evidence, oral and documentary, adduced by the parties, the learned Trial Judge recorded the following findings:

"1. Affirmative.
2. Affirmative.
3. Affirmative.
4. Affirmative.
5. Affirmative.
6. Affirmative.
7. Affirmative.
8. Affirmative".

4. In view of the said findings, the learned Trial Judge decreed the suit in favour of the respondent.

5. Learned counsel for the appellant has taken us through the judgement and the evidence on record, and has contended that the learned Trial Judge has erred in recording the findings against the appellant on the

issues. However, the findings recorded by the learned Trial Judge are based on appreciation of evidence on record and it is not shown that he has committed any error in appreciating the evidence and recording the findings which would justify interference in the appeal. The appeal is, therefore, dismissed. No order as to costs.

[KSHITIJ R. VYAS, J.]

[M.C. PATEL, J.]
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